

**NO. 48323-8-II**

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

COBA PALMER, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Michael Schwartz

No. 14-1-04764-1

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**BRIEF OF RESPONDENT**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial err in considering the defendant's CrR 7.8 motions on the merits without holding a hearing or requesting a response from the State?
2. Is the procedural error harmless where the defendant independently filed a Personal Restraint Petition in the Court of Appeals arguing the same issue?
3. Does the defendant demonstrate that the application of RCW 9.94A.505(6) under *State v. Watson* is both incorrect and harmful?

B. STATEMENT OF THE CASE.

1. Procedure

A detailed account of the procedure in this case is set out in the State's response to the Personal Restraint Petition (PRP). In brief, in July, 2015, through pleas and a dismissal, the defendant/petitioner resolved three Pierce County superior court cause numbers: 14-1-03795-5, 14-1-04764-1, and 14-1-04571-1 (dismissed); and one Pierce County district cause number: #4ZC003022. He was later sentenced.

On October 26, 2015, the defendant filed two post-judgment motions under CrR 7.8: to "Modify or Correct" (CP 35-37) and for "Relief From" (CP 38-41) judgment. The defendant complained that he

was not properly credited with time served. The trial court considered the motions without requesting response from the State or holding a hearing. The court denied the motion. CP 42. The defendant filed a timely appeal.

On November 23, 2015, the defendant filed a Personal Restraint Petition in the Court of Appeals arguing the same credit for time served issue. *See* #48286-0-II, now consolidated with this appeal #48323-8-II.

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY DENIED THE DEFENDANT’S MOTION TO CORRECT THE JUDGMENT.

a. Procedure for motion to modify or correct judgment.

The trial court has jurisdiction to amend judgment to correct erroneous sentence, where justice requires. *State v. Hardesty*, 129 Wn.2d 303, 915 P.2d 1080 (1996).

Under CrR 7.8(c)(2), the Superior Court generally transfers a motion to vacate judgment to the Court of Appeals as a PRP. *See State v. Smith*, 144 Wn. App. 860, 863, 184 P.3d 666 (2008). If the motion is timely and appears to have merit or requires fact finding, the superior court may retain and hear it. If the trial court does retain the motion, it must order a show cause hearing directing the adverse party to appear. CrR 7.8(c)(3). *State v. Robinson*, 193 Wn. App. 215, - P. 3d- (2016). A ruling on a motion to correct or modify sentence is reviewed for abuse of

discretion; a trial court necessarily abuses its discretion if it bases its ruling on an erroneous view of the law. *State v. Crawford*, 164 Wn. App. 617, 267 P.3d 365 (2011).

Here, it appears that the trial court considered the merits of the motions and reviewed the files without requesting a response from the State. Although it may have had ended with the same result, the trial court should have at least ordered a response from the State. The court did err in its procedure.

b. Any error here is harmless.

Any error here is harmless because the defendant/petitioner filed a separate PRP regarding the same issue in the Court of Appeals. The motions in the trial court were essentially duplicate filings. The superior court could have transferred the case to the Court of Appeals as a PRP. Instead, it mistakenly considered the motions on the merits, which still leaves the issue to be decided by the Court of Appeals on the merits. The result is that the defendant/petitioner will have his issue heard.

2. THE DEFENDANT FAILS TO DEMONSTRATE WHY *STATE V. WATSON* SHOULD BE OVERRULED.

Because of the principle of *stare decisis*, appellate courts are very reluctant to overrule previous cases. The proponent is required to make a

clear showing that an established rule is both incorrect and harmful. *See State v. Barber*, 170 Wn.2d 854, 863-864, 248 P. 3d 494 (2011).

*State v. Watson*, 63 Wn. App. 854, 859, 822 P.2d 327 (1992)

applied former RCW 9.94A.120(13), now recodified as 9.94A.505(6):

The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

As the Court in *Watson* pointed out, this language is clear and mandatory. 63 Wn. App. at 859, 860. It does not grant any discretion to give credit on more than one cause number. The Court noted that a sentencing court could consider time served on other sentences or cases when deciding where to sentence within the standard range, or perhaps in imposing a mitigated exceptional sentence. *Id.*

The credit for time served provision has been part of the SRA since the Act was implemented in 1981. Subsections .120 and .505 have been amended many times since 1981, but the Legislature has never changed the credit for time served provision. The *Watson* reading and application of this statute remains correct.

*Watson* has been discussed and cited in cases, most recently in *State v. Lewis*, 185 Wn. App. 338, 344 P.3d 1220 (2014). There, this Court cited *Watson* and quoted *State v. Williams*, 59 Wn. App. 379, 382, 796 P.2d 1301 (1990), with approval. *Lewis*, 185 Wn. App. at 343-344. The trial court exercised its “discretion” and gave Lewis credit for time

served that he had previously received credit for in an unrelated resolved case and credit for time served on an unrelated judgment and sentence. The State appealed and the Court reversed the trial court. *Id.*, at 347.

Last year, the Supreme Court reversed *Lewis* because the parties agreed on the amount of credit for time served. *State v. Lewis*, 184 Wn.2d 201, 355 P.3d 1148 (2015). However, the reliance on *Watson* and *Williams* was neither reversed, nor criticized.

The defendant in the present case argues that the trial court has discretion to give credit for time served as the court sees fit. App. Br. at 6. However, in *Lewis* the trial court was reversed for doing the same thing; exercising discretion in giving the defendant credit for two cause numbers.

In *State v. Stewart*, 136 Wn. App. 162, 149 P. 3d 391 (2006), Division I of the Court of Appeals also cited *Watson* with approval and used it in the analysis of the credit for time served issue. There, the defendant was sentenced on six charges in three cause numbers on one day. The court refused to give multiple credit for time served. The sentence was affirmed.

*Watson* and *Williams* correctly interpret RCW 9.94A.120(13), and because it is unchanged, 505(6), regarding the calculation of credit for time served. The defendant cannot show that they are incorrect or harmful. These cases have been cited with approval. They have not been questioned or criticized.



D. CONCLUSION.

The trial court erred by considering the defendant/petitioner's CrR 7.8 motion without holding a hearing or requesting a response from the State. However, since the defendant filed a PRP independent of the motions, the error is harmless.

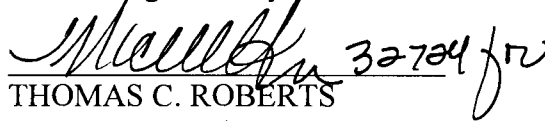
The State respectfully requests that the judgment be affirmed.

DATED: July 29, 2016.

MARK LINDQUIST

Pierce County

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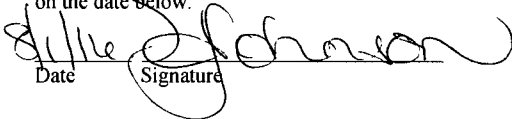
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Certificate of Service:

The undersigned certifies that on this day she delivered by ~~US-mail~~ or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

  
Date Signature

# PIERCE COUNTY PROSECUTOR

**August 01, 2016 - 9:10 AM**

## Transmittal Letter

Document Uploaded: 4-483238-Respondent's Brief.pdf

Case Name: State v. Coba Palmer

Court of Appeals Case Number: 48323-8

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### The document being Filed is:

Designation of Clerk's Papers

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Statement of Arrangements

Motion: \_\_\_\_\_

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☒ Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

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Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

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